In the Matter of Merchant Mariner's Document Z-439836
Issued to: CICERO JAMES RAY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CICERO JAMES RAY

This case comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 14 April, 1949 an Examiner of the United States Coast Guard at Port Arthur, Texas entered an order revoking Appellant's Merchant Mariner's Document Z-439836 and all other documents, certificates and/or licenses issued to him, upon finding him guilty of "misconduct" based upon two specifications alleging, first, assault and striking his superior officer on 16 August, 1947 while serving as fireman-watertender on the SS JOHN G. WHITTIER and; second, importing and bringing into the United States 270 grains of bulk marihuana on 14 July, 1948 while serving as oiler on the American SS ALMERIA LYKES.

Voluntarily waiving his right to representation by counsel, Appellant pleaded guilty to the charge and each specification. His explanation for each incident is built around domestic difficulty and worry; and he made no attempt to justify his acts on either occasion. At the close of the hearing the Examiner entered the above order of revocation.

From that order this appeal has been taken and it is now contended: First, that the specification alleging the importation of marihuana is in violation of the Fifth Amendment to the Constitution of the United States in that it subjects the Appellant to double jeopardy for the same offense since he was convicted in the United States District Court for the Southern District of California and sentence was imposed. Second, the proceeding based upon the charge of assault is barred by "the Statute of Limitations."

FINDINGS OF FACT

On 16 August, 1947, Appellant was serving as Fireman-Watertender on the American JOHN G. WHITTIER under authority of his duly issued Merchant Mariner's Document Z-439836.

On that date he assaulted and struck with his fist a superior officer on watch and inflicted bodily harm to said officer. The assault was entirely without provocation or justification.

On 14 July, 1948 Appellant while serving as Oiler on the American Steamship ALMERIA LYKES under authority of his duly issued Merchant Mariner's Document knowingly imported and brought into the United States from a foreign country approximately 270 grains of bulk Marihuana, contrary to law.

On 9 October, 1948 Appellant appeared with counsel in the United States District Court for the Southern District of California and upon his plea of guilty to an indictment alleging illegal importation of marihuana, was sentenced to imprisonment for a period of six months and was fined the sum of $250.00; however, execution of the jail sentence was suspended for a probationary period of two years on condition that the fine be paid within thirty days and that during said two-year period Appellant should not violate any laws of the United States, State, County or City in which he may reside.

OPINION

It is now well established that proceedings under R.S. 4450 (46 USC 239), as amended, do not constitute double jeopardy within the meaning of the Fifth Amendment to the Constitution.

There is no merit in Appellant's contention that he was "twice placed in jeopardy of life, limb and property *** in violation of the Constitution of the United States of America."

Proceedings under R. S. 4450 (46 USC 239) are instituted to determine whether or not a license, certificate or document which was voluntarily granted to the holder entitling him to certain privileges should remain in effect or be suspended, revoked or otherwise, affected. It has been held that the doctrine of double jeopardy governs only when there is an attempt to twice punish criminally for the same offense; and that revocation of a privilege voluntarily granted is a remedial sanction enforceable by proceedings which are characteristically free of the punitive elements of criminal prosecution. Helvering v. Mitchell, 303 U.S. 391.

Title 46 United States Code 239 (h) clearly recognizes the remedial nature of this proceeding by requiring that evidence of criminal liability be referred to the Department of Justice for prosecution. Hence since this proceeding is not penal in nature, the double jeopardy rule is inapplicable.

The fact that limited punishment may be imposed is not enough to label the statute in question as a criminal one. Brady v. Daly, 175 U.S. 148.

The same acts may be a violation of two different statutes and, in such a case, the two offenses are punishable without double jeopardy being involved. United States v. Bayer, 331 U.S. 532.

And it is also true that the double jeopardy rule does not apply when there has been a criminal trial followed by another action requiring a different degree of proof. Stone v. United States, 167 U.S. 178. In this proceeding, the "substantial evidence" rule is applicable while in the criminal prosecution it was necessary to establish Guilt "beyond a reasonable doubt."

Finally, it should be stated that the Fifth Amendment prohibits double jeopardy of "life or limb" - - not "life, limb and property" as is urged in the appeal. Since this is a proceeding directed against appellant's document, there is no possibility of double jeopardy because the case of Various Items of Personal Property v. United States, 282 U.S. 577, holds that the forfeiture of property is not a part of the punishment for the criminal offense.

Precisely what Statute of Limitations is thought to be applied to this case has not been made clear by the appeal. I know of no such limitation which could be invoked as a bar to this proceeding. The statute which brought these hearings into existence certainly contains no limitation upon the time within which they must be commenced; and I state my conclusion that where Merchant seamen are involved because of their transient and uncertain employment and domicile, there is no statute of limitations applicable.

I agree with the statement made by the Examiner (R-7) where he addressed the Appellant in part as follows:

> "Mr. Ray, in my opinion you are guilty of the most serious offense, possibly short of murder, that could be committed by a merchant seaman. I am not speaking of the first specification. That is serious. I am speaking of the use and possession of narcotic drugs. I believe your story, that you were fouled up. It seems to be truthful and straightforward, but there have been innumerable instances in the merchant marine where the use, possession, or transportation, of marihuana has contributed to a major disaster aboard ship. The first specification was serious in itself. It is quite minor in comparison. Each of the specifications are of sufficient seriousness to cause a revocation of your document. It is my conviction that the use of marihuana, or any other narcotic drug, is so dangerous, not only to yourself, but to the ship and to your fellow crew members, that there is no recourse but revocation."

CONCLUSION and ORDER

I find no reason to disturb the order of the Examiner dated Port Arthur Texas, on 14 April, 1949, revoking Merchant Mariner's Document Z-439836 and all other documents, certificates, and/or licenses issued to CICERO JAMES RAY, Appellant. Said order is therefore AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 28th day of June, 1949.